

How and of whom letters testamentary or of administration are to be obtained.

returned '*non est*,' and the party shall not appear according to the tenor of the second summons, or appearing shall not, within twenty days thereafter, file a bond as aforesaid, letters of administration may be granted as aforesaid; provided nevertheless, that in case of sickness of, or accident to, such executor or executrix, or reasonable excuse made in his or her behalf, the court may, at discretion, allow a further time, not exceeding forty days after such return or appearance, for filing such bond.

SEC. 5. If the said sole executor or executrix be out of the state at the time of authentication or probat, and shall not within six months thereafter, return and file a bond as aforesaid, letters of administration may be granted as aforesaid; but in case the said executor be out of the state as aforesaid, and shall return, at any time before the expiration of the said six months, in order to expedite the granting of letters, there may be a summons, and the same proceedings thereon, as if he or she had been in the state at the time of authentication and probat, and upon the said proceedings letters of administration may be granted before the expiration of six months; but it shall not be held necessary to proceed by summons as aforesaid, in case the party be as aforesaid out of the state at the time of authentication or probat, and shall return as aforesaid; but letters of administration, after the expiration of the said six months, may be granted, without such proceeding by summons against the executor or executrix so returning.

SEC. 6. If there shall be more than one executor or executrix, named in a will containing any disposition relative to any personal estate, there may be the same proceedings with respect to each of them, as if he or she were the only executor or executrix named; and any circumstances, under which letters of administration may be granted, on failure of a sole named executor or executrix, shall authorize the granting letters testamentary to one or more of the executors, on the failure of one or more of the rest; and any circumstances under which letters of administration may be granted, on failure of a sole named executor or executrix, shall authorize the granting of such letters of administration on failure of all the executors; and in no case, where there are several executors named in a will, shall letters testamentary be granted to one only, or to any number of them less than the whole, or shall letters of administration be granted, until there shall be such proceedings against each of them failing, as would authorize the issuing letters of administration in case of the failure of a sole named executor.

SEC. 7. If any executor or executrix named in a will shall file, or transmit to the orphans court of the county wherein the will shall have been authenticated or proved as aforesaid, an attested renunciation in writing of his or her trust, there may be the